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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Assessment and Collection
of Regulatory Fees for
Fiscal Year 1995

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MD Docket No. 95-3

Comments of the NYNEX Companies

The NYNEX Companies ("NYNEX")¹ hereby comment on the Commission's January 10, 1995 Notice of Proposed Rulemaking ("NPRM") in the proceeding referenced above.

I. INTRODUCTION AND SUMMARY

In these comments, NYNEX addresses two issues raised by the Commission's proposal to revise the Schedule of Regulatory Fees for Fiscal Year 1995 ("FY 1995"). In Section II, we explain why all providers of interstate service, including interexchange carriers ("IXCs"), local exchange carriers ("LECs"), competitive access providers ("CAPs") and Other Providers should be required to calculate their fee responsibility based on minutes of use ("MOU"). As described in that section, the MOU methodology will assure that all parties pay an equitable portion of the total fees assessed for FY 1995. We also demonstrate that the "Per MOU Rate" developed by the Commission in the NPRM is incorrect and must be recalculated as described herein. In Section III, we demonstrate that the Commission's fee proposals for wireless licensees and regulatees fail to provide for an equitable distribution of the Commission's costs among all parties who benefit from the Commission's regulatory activities. By excluding certain parties

¹ The NYNEX Companies are New York Telephone Company, New England Telephone and Telegraph Company and NYNEX Mobile Communications Company.

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from any fee payment obligation, the Commission has imposed an unfair burden on cellular carriers.

II. COMMON CARRIERS SHOULD BE REQUIRED TO COMPUTE THEIR FEES BASED ON THE NUMBER OF MINUTES OF INTERSTATE TRAFFIC

In paragraphs 58-60 of the NPRM, the Commission seeks comment on two alternate methods of calculating fees for the Common Carrier category: (1) the number of customer units and (2) the number of minutes of interstate traffic. The Commission seeks comment on which of the two approaches is the most efficient and equitable method to assess the fees. NYNEX recommends the use of the number of minutes of interstate traffic (herein called minutes of use "MOU") approach.²

A significant portion of the Commission's regulatory activities are aimed at developing policies that promote competition. The use of the customer units (presubscribed lines) methodology will not result in an equitable distribution of costs because it is likely to result in fee payments for new competitive entrants that have no relationship to the Commission's regulatory activities undertaken on behalf of such entities. As a result of their targeted marketing, new competitive entrants provide fewer lines than more established carriers. While these competitive entrants may have a relatively low number of presubscribed lines, they typically serve business users or large entities with heavy communication requirements on a per line basis. As a result, the lines they serve are likely to carry relatively high usage volumes. These carriers should be expected to shoulder their fair portion of the Commission's regulatory costs. The MOU approach yields a result that better reflects the relative size of each carrier's

² Of course, the approach that would best ensure that the Commission's costs are properly assigned to cost-causers would require the Commission to inventory its resources according to each regulatory activity. However, this approach would require the Commission to expend a considerable amount of time and to conduct an inventory. In the absence of such an inventory, we suggest that the Commission use the MOU approach, modified as described herein.

customer base and regulatory needs. This approach is also more in line with what is driving the market participants, that is “usage”, and, thus, would better ensure that every party pays an equitable share of the Commission’s regulatory costs.

In using the MOU approach, the Commission should require that fees be assessed based on billed MOU for the entire calendar year. Use of calendar year MOU data is consistent with general accounting practices used by most companies and is used in most financial recordkeeping. In addition, calendar year MOU data is easy to administer and verify and avoids unnecessary assumptions, calculations and projections. The Commission should adopt a single fee calculation methodology and should not permit parties to choose between two alternate methodologies. This will guard against the possibility that parties may “game” the process in order to minimize their fee payment obligations and assure that fees are more equitably assessed.

In paragraph 60 of the NPRM, the Commission determined the Per MOU Rate for the Common Carrier Fee category to be \$.08 per 1000 MOU. The Commission’s calculation of the rate is erroneous. The use of the \$.08/1000 MOU rate would result in a regulatory fee that is nearly double that required to generate the \$39,000,000 for the Common Carrier category. The Commission’s error results, in part, from its failure to include both IXC and LEC minutes in its calculation of total common carrier MOU.³ All usage minutes clearly should be included in the calculation.

In addition, the Commission incorrectly calculated its estimate of the Special Access MOUs. The Commission proposes to estimate the number of minutes for services not billed on the basis of timed usage by multiplying billed revenue by 10.⁴ It asserts that this multiplier reflects the Commission’s assumption that customers would

³ NPRM at para. 60 at n.22.

⁴ NPRM at para. 60.

substitute special access for MTS where the price of MTS is greater than 10 cents per minute. The Commission's use of a factor of 10 understates the usage volume associated with special access facilities. For example, for a DS1 service in Zone 2 with a distance of 5 miles, an IXC customer would pay \$658 per month. Using the Commission's proposed methodology -- that is, multiplying these revenues by 10 -- usage on this DS1 would be estimated to be 6580 MOU per month. However, at the current switched access rate of \$.039, the point at which DS1 customers in Zone 2 would switch to special access is 16,900 minutes per month. This use of actual data would suggest that the Commission should calculate the cross-over points for all high capacity services. In order to avoid the administrative burdens associated with such an undertaking, NYNEX suggests that the use of a factor of 20 will result in a conservative estimate of special access usage.

When LEC and IXC MOU are included, and special access minutes are adjusted as described above, the total MOU for FY 1995 is increased to 995.7 Billion, as follows:

LEC Access Minutes	393.0 Billion MOU
IXC Access Minutes	393.0 Billion MOU
Resale (5 percent)	19.7 Billion MOU
<u>Special Access MOU</u>	<u>190.0 Billion MOU</u>
<i>Total</i>	995.7 Billion MOU

Allocating \$39,000,000 across 995.7 Billion MOU yields a Per MOU Rate of approximately \$.039168 per 1000 MOU. The Commission should adjust its Per MOU Rate accordingly.

III. THE COMMISSION SHOULD REQUIRE ALL WIRELESS PARTIES RESPONSIBLE FOR REGULATORY COSTS TO PAY AN EQUITABLE PORTION OF THOSE COSTS

The Commission's proposal to exempt personal communications service (PCS), certain Commercial Mobile Radio Services (CMRS), Low Earth Orbital (LEO) Satellite Service and Direct Broadcasting Satellite (DBS) from the fee payment obligation for

1995 is unsound as a matter of law and regulatory policy. If adopted, the fee schedule would place an unfair and inequitable burden on cellular licensees.

The Commission's fee assessment authority is derived from Section 9(a) of the Communications Act. That Section, which authorizes the Commission to assess and collect regulatory fees to recover costs it incurs in carrying out its enforcement, policy and rulemaking, international activities and user information services, does not limit the application of regulatory fees to Commission licensees. The Commission, in paragraph 5 of the NPRM, acknowledges that Section 9(a) explicitly permits the Commission to collect fees from "licensees and other regulatees", that require regulatory activity. It is appropriate to impose such fees on PCS and other wireless providers where, as here, the Commission has expended, and will continue to expend, significant resources on those services.

In proposing to exclude these parties from any fee payment responsibility, the NPRM overlooks the significant costs incurred as a result of the Commission's activities on behalf of PCS, LEO and DBS services. The Commission currently has before it a number of proceedings involving CMRS providers (cellular, PCS, SMR...), with additional proceedings related specifically to PCS.⁵ It has devoted, and is likely to continue to devote, a considerable amount of Commission resources to the task of reviewing and analyzing hundreds of pages of commentary that will be provided by commenters in those proceedings. The FCC is likely to conduct a number of proceedings to finalize PCS auction results, award licenses and resolve outstanding issues. In addition, the Commission will certainly be called upon to address issues related to CMRS, LEO and DBS. Indeed, prompted in large part by the number and

⁵ For example PP Docket No. 93-253 Implementation of Section 309(j) of the Communications Act -- Competitive Bidding and GN Docket No. 90-314 Amendment of the Commission's Rules to Establish New Personal Communications Services.

complexity of issues related to new wireless services, the Commission has created a new Wireless Radio Bureau to regulate the wireless industry and hired new staff members, including lawyers and economists, to deal with wireless issues.

The Commission's failure to apply regulatory fees to all wireless parties will place an unfair and inequitable burden on cellular carriers. For FY 1994, NYNEX Mobile paid \$38,408.86 in regulatory fees. We estimate that under the Commission's proposal, our total payment for fiscal year 1995 will be approximately \$141,663, a 286 percent increase. It is simply unfair, and potentially anticompetitive, to expect NYNEX Mobile and its customers to pay for the costs incurred by the Commission in regulating other wireless providers.⁶ The Commission should adopt a fee schedule that would require all wireless licensees and regulatees to pay their equitable share of the costs the Commission incurs in regulating their activities.⁷

⁶ The Commission notes that the FY 1995 fee is 93 percent higher than the fee for FY 1994. It claims that a substantial portion of this increase results from increases in the amounts that Congress has appropriated for activities whose costs must be recovered from regulatory fees. We believe that a significant portion of those increased fees are attributable the Commission's exhaustive, cost-intensive PCS related activities which began early in 1994.

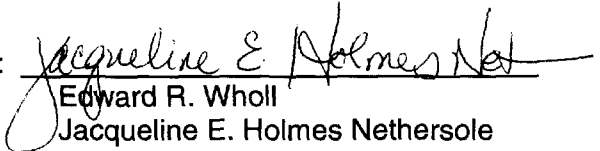
⁷ If the Commission extends the fee schedule to PCS, CMRS, DBS, and LEO licensees, it should not adopt the use of subscriber lines to allocate fee responsibility for a transitional period. The use of subscriber lines would result in minimal, if any, fee responsibility for those parties not withstanding the significant regulatory activities undertaken by the Commission on their behalf.

IV. **CONCLUSION**

The Commission should adopt the rules proposed in the NPRM, as modified by the comments set forth above.

Respectfully submitted,

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